

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America,

Case No.: 2:19-cr-00152-JAD-NJK-1

Plaintiff

**Order Denying Motion
to Reduce Sentence under
Amendment 821**

Gerardo Zarate

[ECF No. 168]

Defendant

9 Defendant Gerardo Zarate is roughly 20 months into serving his 76-month sentence for
10 conspiracy to distribute a controlled substance. He moves for a sentence reduction based on
11 recent changes to the sentencing guidelines known commonly as Amendment 821. The
12 government opposes his motion, arguing that he is ineligible for this relief. Because the sentence
13 that Zarate received was already below the guidelines achieved by applying these changes, I find
14 that Zarate is not eligible for a further sentence reduction and deny his motion.

Discussion

16 The Sentencing Commission submitted criminal-history amendments to Congress in May
17 2023, they took effect in November 2023, and courts may apply them retroactively beginning in
18 February 2024.¹ In his counseled motion, Zarate argues that he is eligible for a sentence
19 reduction under the provision of Amendment 821 related to zero-point offenders.² That
20 provision, added to the guidelines as § 4C1.1, affords a two-level decrease for defendants with

²³||¹ Sent'g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60534 (Sept. 1, 2023).

2 ECF No. 168.

1 no prior convictions and whose offense did not involve specific aggravating factors.³ The
 2 sentencing court may reduce a defendant's sentence based on this amendment if his "term of
 3 imprisonment [was] based on a sentencing range that has subsequently been lowered by the
 4 Sentencing Commission [under] 28 U.S.C. § 994(o) . . . after considering the factors set forth in
 5 section 3553(a) . . . if such a reduction is consistent with applicable policy statements issued by
 6 the Sentencing Commission."⁴ One such policy statement is found in U.S.S.G.
 7 § 1B1.10(b)(2)(A), which states that "the court shall not reduce the defendant's term of
 8 imprisonment" under this statute "to a term that is less than the minimum of the amended
 9 guideline range. . . ."⁵ So although the sentencing court may reduce a previously sentenced
 10 defendant's term of imprisonment based on Amendment 821, it can't do so if the defendant's
 11 original sentence was already below the new guideline range.

12 This is exactly the problem with Zarate's request. He's right that he qualifies as a true
 13 zero-point offender who would otherwise be eligible to receive the benefits of § 4C1.1.⁶ But, as
 14 the government points out in its response,⁷ the sentence that I imposed was already well below
 15 the amended guideline range based on a variance:

Original guideline calculation	Level 33, Criminal History Category I
Original guideline range	135–168 months
New guideline range with two-level decrease under §4C1.1	108–135 months
Original sentence	76 months

21 ³ U.S. Sent'g Comm'n Guidelines Manual § 4C1.1 (U.S. Sent'g Comm'n 2023).

22 ⁴ 18 U.S.C. § 3582(c)(2) (cleaned up).

23 ⁵ USSG § 1B1.10(b)(2)(A).

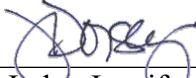
⁶ ECF No. 168.

⁷ ECF No. 170 at 2.

1 Because Zarate's requested reduction would reduce his term of imprisonment to a term that is
2 below the amended guideline range, I decline to award him a further sentence reduction.

3 **Conclusion**

4 IT IS THEREFORE ORDERED that Gerardo Zarate's motion for a sentence reduction
5 under Amendment 821 [**ECF No. 168**] is **DENIED** with prejudice.

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7 U.S. District Judge Jennifer A. Dorsey
8 March 12, 2024

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